



DEC 12 2001

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In re Application of
LOB, Helke
Application No.: 09/623,840
PCT No.: PCT/EP99/01585
Int. Filing Date: 11 March 1999
Priority Date: 11 March 1998
Attorney Docket No.: 40265/DBP
For: MOTOR VEHICLE ACTUATING DEVICE

DECISION
ON PETITION
UNDER 37 CFR 1.181

This decision is in response to applicant's Petition to Withdraw Abandonment filed 28 September 2001 under 37 C.F.R. 1.181.

BACKGROUND

On 11 March 1999, applicant filed international application PCT/EP99/01585, which claimed a priority date of 11 March 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 16 September 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 30 September 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2000.

On 08 September 2000, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an unexecuted declaration.

On 18 October 2000, USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 28 September 2001, applicant filed the instant Petition to Withdraw Abandonment, and *inter alia*, a translation of the international application, the declaration of Helke Lob, the declarations of Alexander A. Martinez and Daniel G. Ferris and a copy of the docket page for this case.

On 05 November 2001, USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating, *inter alia*, that applicant failed to respond to the Notification of Missing Requirements mailed 18 October 2000.

DISCUSSION

PETITION

If applicant can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Requirement (1) is not met. Practitioner does not state that the Office action was not received by the practitioner. The specific statement is instead made by Mr. Daniel Ferris, who is not a registered practitioner.

Requirement (2) is not met. Practitioner makes no specific statement that the file jacket and docket records were searched, resulting in an indication that the Office action was not received.

Requirement (3) is not met. Applicant provided a copy of the computer generated docket readout for the above identified application. However, this copy of the docket readout is deemed to be unacceptable. The docket records required are the docket records for the date on which the response was due (18 November 2000) showing all cases for the practitioner's law firm that had a response due on that date.

Since applicant has not satisfied items (1), (2) and (3) above, the request may not be properly granted.

DECLARATION

The declaration filed 28 September 2001 complies with 37 CFR 1.497(a)-(b).

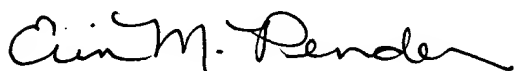
CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required.

The application remains abandoned.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



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